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DEPARTMENT OF STATE

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In an Aide-Memoire handed the Ambassador of Guatemala today, the Department of State gave the views of the Government of the United States concerning the expropriation last March by the Government of Guatemala of 234,000 acres of land belonging to the United Fruit Company in Guatemala, for which compensation has been proffered the company in the form of Guatemalan Government 3 percent "agrarian bonds" maturing in 25 years and in a face value equivalent to the tax value of the land as recorded on May 9, 1952.

Referring to contentions by the Government of Guatemala that the proffered compensation was fair and just, the Aide-Memoire stated that "the fixing of the amount of the bonds on the basis of tax value of the properties, especially in the light of tax-evaluation procedures followed in the instant case by the Guatemalan authorities, bears not the slightest resemblance to just evaluation."

The Aide Memoire stated that according to the facts as understood by the Government of the United States, the Company endeavored for almost five years to raise the tax evaluations of its lands, following procedures prescribed by Guatemala toward this end, but that the values declared by the Company were never entered in the tax records.

The Department also stated that "payment in bonds maturing in 25 years, with interest at 3 percent per annum, and of uncertain market value is scarcely to be regarded as either prompt or effective payment." The Aide-Memoire added that "The obligation of a state imposed by international law to pay just or fair compensation at the time of taking of property of foreigners cannot be abrogated from the international standpoint by local legislation. If the contrary were true, states seeking to avoid the necessity of making payment for property expropriated from foreign nationals could avoid all pecuniary responsibility simply by changing their local law. Every international obligation could thus be wiped off the books. But international law cannot thus be flouted. Membership in the family of nations imposes international obligations."

In connection with United Nations General Assembly Resolution 636 (VII) of December 21, 1952, cited by the Guatemalan Government in support of its position, the Aide-Memoire pointed out that --". . . nothing contained in the Resolution referred to, authorized or purported to authorize states in the exercise of their sovereignty in developing their natural wealth and resources, to violate rights of other states or their nationals under international law. The Resolution referred to clearly recommends that consideration be given by member states to the need for maintaining the flow of capital in conditions of security, mutual confidence, and

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economic cooperation among nations' in the exercise of the right freely to use and exploit their natural wealth and resources. As is well known, the undermining of confidence on the part of foreign investors is a direct result of Guatemala's expropriation of foreign-owned property; the Resolution warned that this would be the result."

The Department said in its Aide-Memoire that "the United States can only expect that the Government of Guatemala, as a sovereign state and as a member of the family of nations, will conduct its affairs with justness, with reasonableness and with fairness. It is to be hoped that the two Governments shall achieve such a formula for the settlement of the present matter."

AIDE-MEMOIRE

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AIDE-MEMOIRE

In the Guatemalan Embassy's Memorandum left at the Department on June 26, 1953, there is set forth the position of the Government of Guatemala concerning the expropriation of certain lands located in Guatemala and owned by Compañia Agricola de Guatemala, a Delaware corporation duly registered to do business in Guatemala and a wholly-owned subsidiary of the United Fruit Company, a New Jersey corporation.

The Government of the United States is constrained to discuss certain assumptions on which the Guatemalan Memorandum is premised in order to clarify further the United States position in the matter.

In the Guatemalan Memorandum it is stated that the lands taken from the Compañia Agricola de Guatemala under the Agrarian Reform Law (Decree 900 of the Congress of the Republic) were unproductive and vacant lands that were of no real benefit to the Company or its stockholders. This statement is based upon an erroneous appraisal of the facts.

The expropriated lands formed a part of the land areas acquired by the Company to carry out large-scale development on the West Coast. The contract between the Compania Agricola de Guatemala and the Government of Guatemala authorized the Company to operate its business and properties until 1981. The Company has invested large sums of money in railways, buildings, irrigation and disease-control systems, hospital and dispensaries, sanitation, and other general facilities which could only be justified on a long-term basis. It is well known that banana cultivations have a limited life because of Panama disease and must be replaced from time to time by new cultivations in order to continue profitable operations. The expropriated lands contained sufficient areas suitable for banana cultivation to have enabled the Company to maintain its cultivations in an area adequate for profitable operations during the remaining period of the contract. The expropriation thus deprives the Company of these banana reserve lands. The expropriated areas were very valuable to the Company as an integral part of the larger enterprise.

Furthermore, large areas of the expropriated lands were actually being put to important use in the Company's operations. The Company annually uses a large amount of lumber in its operations and sufficient lumber to meet its requirements was obtained from the expropriated areas. In addition, the Company had profitable lumbering contracts for the cutting of lumber in this area by others. The lands also furnished a source of supply for thousands of banana props which are used on the banana farms each year. Over 11,500 acres were leased to employees for the production of vegetables and fruits for their own consumption and for sale to the Company for its mess hall, hospital and commissaries. These lands were all expropriated. The Company requires a large supply of meat currently for its thousands of employees, and to provide for this meat supply leasing and cattle raising contracts were entered into with John Wharton Smith y Compañia, Ltda. and Jose Maria Valdes Garcia. Of the 62,409 acres leased to John Wharton Smith y Compañia, Ltda., 60,283 acres were expropriated, making it necessary for the lessee to abandon his cattle-raising operations. Of the 33,420 acres leased to Valdes Garcia, 23,229 acres were taken. The Company also had leased a total of 4,248 acres to Prado Velez for agricultural purposes, and of this amount, 4,086 acres were expropriated. It is clear, therefore, from the foregoing that the expropriated lands could not be considered as unproductive and vacant and of no value to the Company.

In the

In the Memorandum under reference, it is stated that effective methods of controlling the spread of Panama disease and even of eradicating it have already been put into practice and that the Compañía Agrícola de Guatemala keeps in its possession areas reasonably adequate for the continuance of its agricultural operations on a profitable basis. It is necessary to explain that so far as the Panama disease is concerned, if lands are situated so that they can be flooded for a long period, and if the soil texture is such that the land will hold water for such period, the banana productivity of the land can be restored for a time, but the disease returns. This Government is advised that flood fallowing is not feasible on the West Coast of Guatemala, even in those cases where the lands are so situated that they may be flooded, because of the porosity of the soil.

The Compañía Agrícola de Guatemala has already abandoned because of Panama disease over 7,000 acres of banana cultivations on the West Coast, representing about 27% of the total area planted. Considering the age of existing cultivations, it is reasonable to suppose that the abandonments from now on will be at a more rapid rate. Since the decree of expropriation took from the Company practically all of its reserve banana lands, the Company is now faced with decreasing production, as the cultivations are abandoned because of disease, and the eventual loss of its banana business in that area. It is for this reason that this Government's Aide-Memoire of March 25, 1953, pointed out that the expropriation would have this result and stated that the United States Government does not believe that it is the intention of the Government of Guatemala to construe and administer the law in such a way as to make continued operations of the Company impossible.

It is sought in the Guatemalan Memorandum to make it appear that the action taken cannot be complained against because the Agrarian Reform Law (Decree 900 of the Congress of the Republic) is a general law, applicable equally to nationals and foreigners.

On the point of alleged equality of treatment, or non-discrimination, as between nationals and foreigners, it is to be noted that on the basis of data announced by the National Agrarian Department itself, published on June 16, 1953, the total acreage of private land thus far expropriated under the Agrarian Reform Law is some 377,000 acres, against which the total Tiquisate land expropriated is 234,000 acres, or almost two-thirds of the entire amount seized. In addition, under a Resolution of August 6, 1953, the National Agrarian Council ordered the expropriation of more than 173,000 acres on the Atlantic side, belonging to the United Fruit Company, which will become final if approved by the President of Guatemala. Such a high disproportion raises the very serious question of discrimination, despite assertions to the contrary.

Further, the United States Government must point out that international law does not authorize States to do any and every act, so long as such act is imposed on nationals and foreigners on a basis of equality or without discrimination. What a state may do with respect to its nationals or their property is a matter largely between that state and its nationals, for the reason that nationals of a state are presumed to be able to take corrective measures looking to the protection of their rights.

The Government of the United States is warranted in expecting not only that the law of Guatemala shall be applied fairly as to American nationals, without discrimination, but also that both the law itself and its application shall conform at least to minimum standards required by international law.

It is

It is next argued in the Guatemalan Memorandum -- with reference to the Agrarian Reform Law -- that "Its application constitutes an act of inherent sovereignty, for which reason the Government of Guatemala could not consider at this time, or in the future, the possibility of making this case matter for international discussion." The Government of the United States does not controvert in the slightest the proposition that the Act of Congress of the Republic of Guatemala, Decree 900, known as the Agrarian Reform Law, constitutes an act of sovereignty inherent in Guatemala. Every act of the Guatemalan Government constitutes a sovereign act, as do the acts of every other sovereign Government, including the acts of the Government of the United States. But to state that no sovereign act of a Government effecting foreign states or their nationals is open to discussion, or question, as to its validity under international law, because it is a sovereign act, is to say that states are not subject to international law. One has only to look at the diplomatic records of any Government over any period of time to see that such sovereign acts are constantly discussed and held up to scrutiny by other members of the family of nations with whom they treat for determination as to whether they measure up to or fall below the standards required under international law.

Doubtless, it will be recalled that in the case of P. W. Shufeldt, an American national, whose claim against Guatemala was settled by international arbitration, Guatemala was held responsible for damages resulting from a legislative act (Decree No. 1544, of May 22, 1928). Interestingly, in that case Guatemala contended, inter alia, that the decree was in the national interest and within the legislative attributes. As to these contentions, the Arbitrator held (in his decision of July 24, 1930, awarding $236,403.59 plus interest in favor of the claimant) that:

> "it is perfectly competent for the Government of Guatemala to enact any decree they like and for any reasons they see fit and such reasons are no concern of this Tribunal. But this Tribunal is only concerned where such a decree, passed even on the best of grounds, works injustice to an alien subject, in which case the Government ought to make compensation for the injury inflicted and cannot invoke any municipal law to justify their refusal to do so."

And at another point in the same decision it was held:

> "The Guatemalan Government contend further that the decree of the 22nd May 1928 was the constitutional act of a Sovereign State exercised by the National Assembly in due form according to the Constitution of the Republic and that such decree has the form and power of law and is not subject to review by any judicial authority. This may be quite true from a national point of view but not from an international point of view for it is a settled principle of international law that a sovereign can not be permitted to set up one of his own municipal laws as a bar to a claim by a foreign sovereign for a wrong done to the latter's subject."

The Government

The Government of the United States is not disposed to comment upon the "policy of the Government of Guatemala in this matter -- /that is to say:/ effectiveness of the social function of property, increase in production, and raising of the people's standard of living", which it is stated in the Memorandum coincides with the stated policy of the United Nations as recited in General Assembly Resolution 636 (VII) of December 21, 1952, Seventh Session. Attention of the Guatemalan Government is called, however, to the fact that nothing contained in the Resolution referred to, authorized or purported to authorize states in the exercise of their sovereignty in developing their natural wealth and resources, to violate rights of other states or their nationals under international law. The Resolution referred to clearly recommends that consideration be given by member States to "the need for maintaining the flow of capital in conditions of security, mutual confidence and economic cooperation among nations" in the exercise of the right freely to use and exploit their natural wealth and resources. As is well known, the undermining of confidence on the part of foreign investors is a direct result of Guatemala's expropriation of foreign-owned property; the Resolution warned that this would be the result.

The Government of the United States is indeed pleased to learn from the Memorandum that the Government of Guatemala "offers the full guarantee and protection of the law to foreign investment companies which operate or desire to operate in the territory /of Guatemala/". However, the guarantee of the protection of Guatemalan law is not enough. The Government of Guatemala is also bound to give the full guarantee and protection of the law of nations to foreign investment companies which operate in the territory of Guatemala. When states in the exercise of their sovereign prerogatives determine as a matter of policy to nationalize the property of foreign states or their nationals, they are under the obligation to pay just compensation for such property.

Thus, in a case where shipbuilding contracts and materials, including ships under construction, the property of Norwegian nationals, were requisitioned by the United States Emergency Fleet Corporation pursuant to a general order of August 3, 1917, and the claim of Norway against the United States was subsequently submitted under an agreement of June 30, 1921, to the arbitration of a Tribunal of the Permanent Court of Arbitration at The Hague, the Tribunal held that:

> "Whether the action of the United States was lawful or not, just compensation is due to the claimants under the municipal law of the United States, as well as under the international law, based upon the respect for private property."

Just compensation may be defined as that compensation which, as indicated in the previous Aide-Memoire of the United States on the present subject, is "prompt", is "adequate", and is "effective" -- otherwise the payment is not "just".

Payment in bonds maturing in 25 years, with interest at 3 percent per annum, and of uncertain market value, is scarcely to be regarded as either prompt or effective payment. Many of the holders will realize little on the bonds in the course of their lives.

The offer

The offer of payment in bonds under all the circumstances is not of a nature to offer "the full guarantee and protection" of either Guatemala or of the law of nations.

Moreover, the fixing of the amount of the bonds on the basis of tax value of the properties, especially in the light of tax-evaluation procedures followed in the instant case by the Guatemalan authorities, bears not the slightest resemblance to just evaluation. The Government of Guatemala in assuming that the Compañía Agrícola de Guatemala bound itself to the tax-assessed valuation of the land, has adopted a position not at all in accord with the facts as understood by the Government of the United States.

The expropriated lands were purchased from 1928 to 1930. At the time of purchase, the properties were undeveloped and were assessed according to declarations made by the Company's predecessors in title in 1921 under Decree 1153 of that year. Although the law authorized the Government to rectify the tax values every five years, nothing had been done since 1921 to raise these values. In 1935 the Government of Guatemala itself fixed the tax values of the Company's properties under the authority contained in a Resolution of January 30, 1930, under which the Minister of Finance issued regulations creating a Commission to carry out a revaluation throughout the country and a Resolution of July 24, 1931, which gave landowners until August 20 to file declarations and provided that in case no declaration was filed the tax value would be that fixed by the Commission. No declaration having been filed by the Company, the Government itself fixed the tax values in 1935. At that time the Company was just starting its development and had not constructed the railways, roads, irrigation systems, sanitation, and other works that greatly increased the value of the land. On May 30, 1945, the Government issued a Resolution providing for another rectification of tax values. In this Resolution it was recited that the Government had not taken any measures to increase tax valuations since the Resolution of July 24, 1931. The Resolution of May 30, 1945, gave the landowners six months within which to file declarations of revised values, and this period was extended from time to time until November 30, 1948. On September 23, 1948, the Compañía Agrícola de Guatemala presented its declaration in accordance with law and received a receipt therefor. On April 22, 1949, the tax officials of the Government being unable to find the declaration presented by the Company, duplicate declarations were filed with the National Tax Office. This declaration of the Company, after excluding many items from the declaration in accordance with the terms of the contract between the Company and the Government, fixed the tax value of its rural property at a figure many times larger than the previously registered value. The Tax Office then advised the Company that its declaration would be checked in due course but that the revision could be made immediately if the Company would pay the expenses of three appraisers and supply them with the necessary information. On July 1, 1949, the Company advised the office handling the tax declarations revision that it was willing to pay the expenses of the appraisers and desired to have the appraisal made. On June 2, 1950, almost a year later, the appraisal was ordered as requested by the Company. In May 1951, after repeated requests by the Company, the appraisers were designated and went to the Company's properties for the inspection. The appraisers received the full cooperation of the Company and completed their work in June 1951. Nevertheless, the values declared by the Company were never entered in the tax records nor was the Company advised of the reason this was not done.

On

On June 19, 1952, the Agrarian Law was enacted with the provision that the basis for fixing values of expropriated properties should be the value registered in the official record of rural property for the land as it stood on May 9, 1952. After the passage of the Agrarian Law on June 19, 1952, and despite the fact that Article 53 of the Constitution of Guatemala provides that administrative acts are public and that citizens have a right to examine them, the attorneys for the Compañía Agrícola de Guatemala were not allowed to examine the file containing the declaration of value made by the Company in 1948 and its subsequent handling.

The foregoing resumé of the facts, far from revealing any imputation of a fraudulent evaluation of its property for tax purposes on the part of the Company, reveals that the Company endeavored for almost five years to raise this evaluation, following procedures prescribed by Guatemala toward this end. In the face of this record it is factually incorrect to assume, as does the Memorandum under reference, that the Company is bound by a tax value fixed by the Government itself almost twenty years ago and an evaluation which is far below the market value of the property at the time of its expropriation. There is a tremendous disparity between the value still registered in 1952 for these lands in the tax records and that proposed by the Company in 1948.

Apart from the foregoing recitation of the facts with reference to what seems to have been a studied effort on the part of Guatemalan officials to refrain from changing the tax evaluations in the tax records, it is well known that in many jurisdictions the practice of evaluating land for tax purposes at less than its real or fair value has the sanction of accepted usage. In any case, no imputation of fraud arises when the owner seeks the full value of his land in the case of sale or in the event of expropriation. That tax values in Guatemala are not intended to represent the full commercial value of the land at a given time is indicated by the long periods which elapsed between tax evaluations and the fact that the law provides that the tax value of land will not be increased between evaluations unless the property is sold. This is also indicated by the fact that the general expropriation law of Guatemala (Decree No. 529 of July 9, 1948) allows owners, in the case of partial expropriation of property to recover up to 30 percent in excess of the tax evaluation of the entire property.

In the present case, therefore, the offer of the Government of Guatemala to make payment for properties expropriated on the basis of tax value, and that a tax value which Guatemalan officials themselves initially fixed and maintained on the tax records, in spite of the efforts of the Company to have the tax values rectified, represents a mere gesture, certainly not the payment of the just or fair compensation required by international law.

The obligation of a state imposed by international law to pay just or fair compensation at the time of taking of property of foreigners cannot be abrogated from the international standpoint by local legislation. If the contrary were true, states seeking to avoid the necessity of making payment for property expropriated from foreign nationals could avoid all pecuniary responsibility simply by changing their local law. Every international obligation could thus be wiped off the books. But international law cannot thus be flouted. Membership in the family of nations imposes international obligations.

In thus

In thus rejecting the factual and legal soundness of the Guatemalan Memorandum of June 26, 1953, the Government of the United States desires to make clear that the transparent excuses made for the proffered treatment of American property rights in Guatemala--the exercise of sovereign rights by Guatemala, non-discrimination as between nationals and aliens, payment of a deliberately maintained tax value -- are not tantamount to the payment of just compensation, to reasonable evaluation, or to fair treatment. Such compensation as that proposed by Guatemala in the present case, is anything but encouraging to American investors and American enterprise in Guatemala.

The United States seeks only that which is just -- that which is reasonable -- that which is fair -- for American investors in Guatemala.

The Government of the United States has long demonstrated by concrete acts its support of programs improving the economic conditions of its neighbors. It supports agrarian development, but sees no shred of justification in agrarian legislation sanctioning the seizure of property of American citizens in Guatemala contrary to international norms. Violation of the basic norms of justice cannot fail to undermine mutual confidence without which economic progress is retarded.

The United States previously raised the question of compensation in the hope that a settlement might be arrived at before presenting, on behalf of the American owners of Compañía Agrícola de Guatemala, a formal claim for compensation as required to be paid under international law. Through amicable negotiations, the United States seeks to protect her nationals and their property rights.

The Department of State adheres to the hope that the Government of Guatemala will perceive the desirability of exploring these matters carefully and with all possible wisdom, bearing in mind that the United States can only expect that the Government of Guatemala, as a sovereign State and as a member of the family of nations, will conduct its affairs with justness, with reasonableness and with fairness. It is to be hoped that the two Governme ts shall achieve such a formula for the settlement of the present matter.

Department of State,

Washington,

* * *

State--PB--Wash., D.C.